MONTANA LEGISLATIVE HISTORY

Chapter 145 1999

Bill H _____ S 87 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/4	✓ C	1/11	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3/9	✓ C	Date Out 1/15	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

1/04	Referred to Taxation		
2/01	Fiscal Note Received		
2/02	Fiscal Note Printed		
2/04	Revised Fiscal Note Requested		
2/05	Revised Fiscal Note Received		
2/05	Revised Fiscal Note Signed		
2/06	Revised Fiscal Note Printed		
3/03	Hearing		
3/31	Missed Deadline for Revenue Bill Transmittal		

SB 86 Introduced by Halligan *LC1046 Drafter: Heiman*

Place All Electrical Transmission and Distribution Property into a Single Property Tax Class;...

By Request of Revenue Oversight Committee

12/18	Introduced		
1/04	1st Reading		
1/04	Referred to Taxation		
1/07	Fiscal Note Requested		
2/01	Fiscal Note Received		
2/02	Fiscal Note Printed		
3/03	Hearing		
3/03	Tabled in Committee		
3/31	Missed Deadline for Revenue Bill Transmittal		

SB 87 Introduced by Hargrove *LC0438 Drafter: Sternberg*

Revise Statutes Regarding Snowmobile Safety and Liability by Clarifying the Duties of Snowmobilers and Snowmobile Area Operators;...

12/21	Introduced		
1/04	1st Reading		
1/04	Referred to Judiciary		
1/11	Hearing		
1/15	Committee Executive Action--Bill Passed as Amended	7	0
1/16	Committee Report--Bill Passed as Amended		
1/19	2nd Reading Passed	48	0
1/20	3rd Reading Passed	50	0
	Transmitted to House		
2/16	Referred to Judiciary		
3/04	Hearing		
3/09	Committee Executive Action--Bill Concurred	15	5
3/10	Committee Report--Bill Concurred		
3/13	2nd Reading Concurred	82	15
3/15	3rd Reading Concurred	86	13
	Returned to Senate		
3/15	Sent to Enrolling		
3/16	Returned from Enrolling		
3/17	Signed by President		
3/18	Signed by Speaker		
3/19	Transmitted to Governor		
3/23	Signed by Governor		

3/24	Chapter Number Assigned Chapter Number 145 Effective Date: 3/23/1999 - All Sections		

SB 88 Introduced by Stang *LC0406 Drafter: Heiman*

Provide That the Department of Justice Is the Proper Party to Defend Tax Appeals Involving Motor Vehicle Taxes or Fees in Lieu of Tax;...

By Request of Department of Justice

12/21	Introduced		
1/04	1st Reading		
1/04	Referred to Taxation		
1/04	Fiscal Note Requested		
1/08	Fiscal Note Received		
1/08	Fiscal Note Signed		
1/09	Fiscal Note Printed		
1/11	Hearing		
1/13	Committee Executive Action--Bill Passed as Amended	8	0
1/13	Committee Report--Bill Passed as Amended		
1/14	2nd Reading Passed	50	0
1/15	3rd Reading Passed	50	0
	Transmitted to House		
1/16	Referred to Taxation		
1/22	Hearing		
1/28	Committee Executive Action--Bill Concurred as Amended	20	0
1/29	Committee Report--Bill Concurred as Amended		
3/02	2nd Reading Concurred	97	0
3/02	Reconsidered Previous Action; Remains in 2nd Reading Process		
3/02	2nd Reading Concurred as Amended	96	0
3/04	3rd Reading Concurred	99	0
	Returned to Senate with Amendments		
3/06	2nd Reading House Amendments Concurred	48	0
3/08	3rd Reading Passed as Amended by House	50	0
3/08	Sent to Enrolling		
3/09	Returned from Enrolling		
3/10	Signed by President		
3/11	Signed by Speaker		
3/12	Transmitted to Governor		
3/16	Signed by Governor		
3/17	Chapter Number Assigned Chapter Number 85 Effective Date: 3/16/1999 - All Sections		

SB 89 Introduced by Stang *LC0183 Drafter: Kurtz*

Require the Department of Commerce to Design and the Department of Transportation to Erect Signs Identifying Visitor Information Centers

12/21	Introduced		
1/04	1st Reading		
1/04	Referred to Highways and Transportation		
1/04	Fiscal Note Requested		
1/04	Fiscal Note Received		

SENATE BILL NO. 87

INTRODUCED BY HARGROVE D

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATUTES REGARDING SNOWMOBILE SAFETY AND LIABILITY BY CLARIFYING THE DUTIES OF SNOWMOBILERS AND SNOWMOBILE AREA OPERATORS; CLARIFYING THE INHERENT RISKS OF SNOWMOBILING; ELIMINATING THE PROVISION REGARDING THE EFFECT OF MONTANA COMPARATIVE NEGLIGENCE LAW ON RECOVERY FROM SNOWMOBILE AREA OPERATORS FOR DEATH OR INJURY RESULTING FROM AN INHERENT SNOWMOBILING RISK; AMENDING SECTIONS 23-2-651, 23-2-652, 23-2-653, AND 23-2-654, MCA; REPEALING SECTION 23-2-656, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-651, MCA, is amended to read:

"**23-2-651. Purpose.** The legislature finds that snowmobiling is a major recreational sport and a major industry in this state and recognizes that ~~there are inherent risks in the sport of snowmobiling that are essentially impossible for a snowmobile area operator to eliminate but that should be known by a reasonable and prudent snowmobiler. The purpose of 23-2-651 through 23-2-656 is to define those areas of responsibility and the acts for which a snowmobile area operator is liable for death or injury to any person or property and those risks for which a snowmobiler expressly assumes or must be considered to have voluntarily assumed the risk of death or injury and for which there can be no recovery~~ among the attractions of the sport are risks, inherent and otherwise. The state has a legitimate interest in:

(1) maintaining the economic viability of the snowmobiling industry by discouraging claims based on damages resulting from risks inherent in the sport;

(2) clarifying what the inherent risks of snowmobiling are; and

(3) establishing the duties of snowmobilers and snowmobile area operators."

Section 2. Section 23-2-652, MCA, is amended to read:

"**23-2-652. Definitions.** As used in 23-2-651 through ~~23-2-656~~ 23-2-655, the following definitions apply:

(1) "Snowmobile" means a vehicle defined in 23-2-601(10).

(2) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(3) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(4) "Snowmobiler" means any person operating or riding a snowmobile."

Section 3. Section 23-2-653, MCA, is amended to read:

"**23-2-653. Snowmobile area operators -- duties -- restriction on liability.** (1) ~~The~~ Consistent with the duty of reasonable care owed by a snowmobile area operator to a snowmobiler, the person responsible for the maintenance of or operation of a snowmobile area shall mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the snowmobile area.

~~(2) A snowmobile area operator is liable for death or injury to a snowmobiler or other person or property only for an act or omission that constitutes gross negligence.~~

~~(3)~~(2) Except as provided in this section, a snowmobile area operator has no duty to eliminate, alter, control, or lessen the ~~risk~~ risks inherent in the sport of snowmobiling. ~~A snowmobile area operator who attempts to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling is liable only for an act or omission that constitutes gross negligence.~~"

Section 4. Section 23-2-654, MCA, is amended to read:

"**23-2-654. Snowmobiler's assumption of responsibility -- duties.** (1) A snowmobiler ~~shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling and has the duty to regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of snowmobiling is avoided. The risks inherent in the sport of snowmobiling include variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks,~~

~~trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment~~ shall operate a snowmobile at all times in a manner that avoids injury to self and others and must be aware of the inherent risks in the sport of snowmobiling.

(2) A snowmobiler ~~is responsible for~~ shall:

(a) ~~knowing~~ know the range of the snowmobiler's ~~own~~ ability ~~to snowmobile any slope, trail, or area~~ and ~~for snowmobiling~~ snowmobile safely within the limits of ~~the snowmobiler's~~ that ability ~~considering the conditions;~~ and the snowmobiler's equipment so as to negotiate any section of terrain or snowmobile trail safely and without injury or damage. A snowmobiler must be aware that the snowmobiler's ability may vary because of terrain or trail changes caused by weather, grooming changes, or snowmobile use.

(b) ~~maintaining~~ maintain control of speed and course at all times while snowmobiling so as to prevent injury to self and others;

(c) ~~heeding~~ heed all posted warnings; and

(d) ~~refraining~~ refrain from acting in a manner that may cause or contribute to the injury of anyone.

(3) A snowmobiler shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling. Risks inherent in the sport of snowmobiling are:

(a) variations in terrain, including surface or subsurface snow or ice conditions naturally occurring or resulting from weather changes, snowmobile use, or grooming or snowmaking operations;

(b) bare spots or thin snow cover caused by limited snowfall, melting, wind erosion, snowmobile action, grooming, or unconsolidated base;

(c) rocks, trees, or other forms of forest growth or debris;

(d) clearly visible or plainly marked improvements or trail maintenance equipment; and

(e) avalanches.

(4) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."

NEW SECTION. **Section 5. Repealer.** Section 23-2-656, MCA, is repealed.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 11, 1999 at 10:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 16, SB 65, SB 87
Executive Action: None

HEARING ON SB 65

Sponsor: **SEN. DEBBIE SHEA, SD 18, Butte**

Proponents: **Joe Mazurek, Attorney General**
Robert McCarthy, Butte-Silver Bow County
Eileen Joyce, Butte-Silver Bow County Attorney
Don Waldron, Montana Rural Education Assoc. and the Montana County Superintendents Assoc.
Robin Bulleck, Citizen

Closing by Sponsor:

SEN. SHEA stated that all the legislative reasons for having weapons on schools can be addressed by school board policy. We need to be vigilant in our commitment to make schools safe havens for learning, growing and nurturing our youth.

{Tape : 1; Side : A; Approx. Time Counter : 10.47}

HEARING ON SB 87

Sponsor: **SEN. HARGROVE, SD 16, Belgrade**

Proponents: **Ken Hoovestal, Montana Snowmobile Association**
Doug Monger, Administrator of the Parks Division, Department of Fish, Wildlife and Parks (FWP)

Opponents: **Al Smith, Montana Trial Lawyers Assoc.**
George Ochenski, Citizen

Opening by Sponsor: **SEN. HARGROVE, SD 16, Belgrade,** introduced SB87. He stated that in 1993 there was a snowmobile accident on Forest Service land that, under an operating agreement, was groomed by the West Yellowstone Chamber of Commerce. A lawsuit followed and resulted in a partial summary judgment. This legislation was drafted to parallel the Skiers Responsibility Act. The discussion concerns the inherent risks with riding snowmobiles, a legitimate state interest in the viability of the industry, and user responsibility.

Proponents' Testimony:

Ken Hoovestal, Montana Snowmobile Association, stated that this bill was brought on behalf of the Association. In the lawsuit, the judge declared the law unconstitutional due to the gross negligence portion. This legislation would allow for showing only ordinary negligence. Because the ski area operators had faced similar lawsuits in recent years, he used a copy of the lawsuit, the summary judgment, and existing law to prepare this legislation. This has been reviewed by legal counsel for the Department of Fish, Wildlife and Parks.

{Tape : 1; Side : B; Approx. Time Counter : 10.52}

Doug Monger, Administrator of the Parks Division, Department of Fish, Wildlife and Parks (FWP), spoke in support of SB87. The legislature has mandated that the FWP operate and maintain the snowmobile program for the state of Montana to provide safe, ethical and legal use of snowmobiles on public lands. The FWP is

specifically listed as a snowmobile area operator for the state of Montana. Additionally, they pass grant moneys to local community organizations to provide snowmobile trail grooming. Those organizations are also considered snowmobile area operators.

The snowmobile liability statute was designed to protect snowmobile area operators from lawsuits for conduct in operating snowmobile areas that were less than gross negligence. A district court overturned the statute.

A similar liability situation existed prior to 1989 in the downhill ski area industry. This problem has been fixed and tested before the Supreme Court. This statute asks for the same effect to occur under the snowmobile liability statutes. Written testimony of Doug Monger, **EXHIBIT(4)**.

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Assoc., rose in opposition to SB87. He remarked that page 2, lines 12-16, sets in the reasonable care standard. However, lines 19-22 which are eliminated, also eliminate the gross negligence standard. Section 1 states a duty of reasonable care for maintenance vehicles. In a heavy snow year, there may be a tree branch that would be a danger. The removal would not be prudent and reasonable if it was left lying in the middle of the trail. This legislation seems to shift all the responsibility to the rider. Written testimony of **Al Smith, EXHIBIT(5)**.

George Ochenski, Citizen, raised a concern that this legislation may lessen the level of assessment of state agencies. He referred to a personal experience with the FWP's proposal to build a snowmobile parking lot halfway up the Beartooth Pass. This proposed parking lot was at the bottom of an avalanche shoot. The department had received a letter from the Forest Service stating that this was not a good place for parking. It also was an undue risk to plow that road all winter long. There are seven avalanche shoots that cross the pathway. It took quite a bit of effort to stop this project. This legislation is different from the ski area legislation because a ski area has a definite boundary. A ski area operator is responsible for the occurrences within the boundaries of that area. There is no boundary on the snowmobile activities in this state.

Questions from Committee Members and Responses:

SEN. DOHERTY believed it would be necessary for the legislation to contain a 2/3rds vote requirement since this addressed immunity of the State of Montana. **Mr. Lane** stated that this may

be necessary. The bill lessens the state's liability from the present snowmobile area operater statute. The bill does provide for assumption of the risk by the people who operate snowmobiles and for this reason may require a 2/3rds vote.

SEN. DOHERTY asked for more information regarding the lawsuit which prompted this legislation. **Mr. Lane** explained that it was a decision in Federal District Court in 1997 that found portions of the Snowmobile Area Operators Responsibility Act unconstitutional. It found the provision that stated that snowmobile area operators are only responsible for gross negligence was unconstitutional because it provided a unique exception for a particular business without a rationale basis for being different from other business.

SEN. DOHERTY questioned whether in complying with the court decision regarding the gross negligence standard, this would leave no standard. He submitted that it may be appropriate to insert language regarding the regular negligence standard of reasonable and prudent. **Mr. Lane** stated that the amendments are to conform this statute with the Ski Area Responsibility Act which was found constitutional by the Montana Supreme Court. This held that the area operators are still responsible for their acts under the concept of ordinary negligence, §27-1-701. The bill requires that persons who are skiers or snowmobile operators assume certain inherent risks in the natural conditions of terrain when snowmobiling or skiing. He agreed to provide copies of the court's decision, **EXHIBIT(6)**, **EXHIBIT(7)**, and **EXHIBIT(8)**.

SEN. DOHERTY questioned whether the Ski Area Responsibility Act contained language which addressed the standard of care so that the ski area operator or the snowmobile area operator would know the standard of care expected of them. **Mr. Lane** stated that it was not contained in this legislation but was contained under the statute of ordinary negligence.

SEN. BARTLETT inquired about the total area that would be covered under this legislation. **Mr. Hoovestal** responded that this would apply only to the groomed trail system.

SEN. BARTLETT stated that the term "snowmobile area" is defined as being "the snowmobile trails . . . or areas open to the operation of snowmobiles." She suggested that in the definition of snowmobile area, striking the language beyond the word "trails". **Mr. Hoovestal** added that there is no operator off the trail systems. He couldn't imagine how this could expand into areas where there is no operator. **Mr. Lane** stated that the bill was not intended to deal with all areas open to snowmobiles.

SEN. BARTLETT summarized that the definition of snowmobile area might be amended to read "snowmobile area means those areas designated as snowmobile trails." **Mr. Lane** suggested that the language state "designated as maintained snowmobile trails".

CHAIRMAN GROSFIELD asked what that would do to area operators' liability with respect to areas off of the maintained snowmobile trails. **Mr. Lane** responded that if you were off the trail, you are snowmobiling in areas in which no one has done anything for which they would have a responsibility. **Mr. Smith** disagreed. He added that it would be a mistake to limit this to maintained trails. More people snowmobile on the open areas that are under the jurisdiction of the state or the Forest Service. It would be a mistake to change the definition.

CHAIRMAN GROSFIELD stated that an area operator who rents snowmobiles may provide a map prepared by the snowmobile club or the Forest Service. This shows the trails and play areas, which are areas off the trail. Oftentimes, these areas are in areas that have been logged and may have stumps. These trails are marked with trail markers. He claimed that area operators should not have to cease making recommendations about play areas. **Mr. Lane** suggested further review of the legislation for amendments. There may be areas in which the operators should be included as part of this legislation.

SEN. DOHERTY asked why the comparative negligence statute was being eliminated. This is a well settled area of law. **Mr. Lane** clarified that the section that is being repealed eliminated comparative negligence from snowmobile area responsibility. The effect of this would be to allow comparative negligence to apply.

SEN. HALLIGAN asked for clarification of the reasonable care standard in Section 3(2). **Ms. Lane** stated that the subsection stated "except as provided in this section" which encompasses the entire section including (1) and the standard. Subsection (2) states that there is no duty except as provided in this Section which includes (1). This means that whatever is done must be done with the duty of reasonable care.

CHAIRMAN GROSFIELD added that the issue of maintenance of machines also needed to be addressed.

<u>Closing by Sponsor</u>:

SEN. HARGROVE summarized that since the summary judgment has been issued, the industry has been operating at more risk than it has in the past. There was an assumption that the same things that

have stood the constitutional test for ski area operations would apply.

HEARING ON SB 16

Sponsor: SEN. BOB KEENAN, SD 38, Bigfork

Proponents: Dal Smilie, Chief Legal Counsel, Department of Administration
Gordon Morris, Montana Association of Counties

Opponents: Al Smith, Montana Trial Lawyers Assoc.
Jim Jensen, Montana Environmental Information Center (MEIC)
George Bennett, Montana Bankers Association
Keith Colbo, Montana Independent Bankers (MIB)
John Flink, Montana Hospital Association (MHA)

Opening by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, introduced SB16. He commented that computer programers shortened the four digit date to two digits. As a result, mainframe and personal computers as well as software programs that control traffic, water, power, phone service, accounting services, supplies, etc., will be affected by this situation. In the year 2000, there is a possibility that computers will malfunction. Estimates of future litigation arising from this problem range up to a trillion dollars. In 1998, five states passed laws invoking sovereign immunity against such claims in order to protect taxpayers funds from the anticipated flood of litigation. This bill prevents claimants and their attorneys from threatening the state's fiscal stability by making the taxpayers of Montana their insurance for a problem created by the computer software industry. For the private sector, the bill encourages efforts to solve the problem instead of engaging in lawsuits. State and local governments and their employees may not be held liable for any harm caused directly or indirectly by Y2K errors. This immunity applies as long as the government's efforts to detect and prevent failure are reasonable. Should there be a problem with a check, all that will be expected is to receive the money and not a strike-it-rich lawsuit.

This bill offers a limitation of liability in the private sector if the failure does not result in bodily injury or certain other conditions regarding notice and repair are satisfied. Hospitals have concerns regard the bodily injury language. If a private sector defendant satisfies the applicable conditions, only an action based on contract can be brought against him. There is a

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 15, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Duane Grimes (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: SB 65, SB 87, SB 112, SB 124, SB 158

EXECUTIVE ACTION ON SB 87

Valencia Lane explained that the amendments entitled SB008702.avl, **EXHIBIT(1)** were prepared to address the concern that the use of the term reasonable care and the standard in subsection (1) may not extend to subsection (2) lines 19-22.

Al Smith, Montana Trial Lawyers Assoc., agreed with the amendments regarding the duty of reasonable care.

Motion: **SEN. HALLIGAN MOVED TO AMEND SB 87.**

Ken Hoovestal, Snowmobile Association, stated that they support the amendments.

Vote: **The motion carried unanimously.**

Ms. Lane reported that **SEN. DOHERTY** had requested additional amendments this morning. She was unable to prepare them before the meeting. She questioned the necessity for the amendments because they related to immunity and this bill no longer grants immunity.

CHAIRMAN GROSFIELD, referring to the elimination of the gross negligence standard on page 2, questioned the liability of the snowmobile area operator with respect to negligence versus gross negligence. In specific he questioned the liability involved when a person rented a machine which malfunctioned while it was being operated and the person was injured.

Mr. Smith stated that there is a section which addresses maintenance of machines and this would be ordinary negligence.

Ms. Lane clarified that under the old law, a snowmobile area operator would not have been liable unless he acted with gross negligence. If he knew the snowmobile had problems and let someone rent the machine knowing they could be injured. If he did not know there was anything wrong with the machine, this would be the lowest standard of negligence and the operator would not have been liable. This bill changes that situation and now the operator could be sued if negligence could be proven.

Mr. Hoovestal remarked that under 23-2-655 the language states that a person who engages in the business of renting snowmobiles to another shall maintain rental snowmobiles in a safe condition.

SEN. HALLIGAN questioned how this would apply to persons who went off the trail and were in open areas.

CHAIRMAN GROSFIELD added that a person may ask the person he is renting the machine from where a good place is to leave the trail. The operator may describe an area and the snowmobiler uses this area but due to the activity the day before a stump may be uncovered. This includes thousands of acres. He questioned what liability the snowmobile operator would have in recommending play areas.

SEN. HALLIGAN remarked that the language stated "snowmobile trails and open areas". **CHAIRMAN GROSFIELD** added that the language also stated "for the designation of". He questioned the definition of the word designation.

Mr. Smith clarified that state and federal government travel maps include designated snowmobile areas. This opens up the areas that are not designated and would not be covered by this section. Subsection (3) address risks inherent. The Forest Service has a policy that if there is an identified hazard on the trail that they had designated, they would post a warning or take care of it. In the case that prompted this legislation, the hazard was identified the day before as a severe dip. It was looked at in the evening and the decision was to take care of it in the morning. The next morning it was determined to be dangerous but the decision was to fill in the dip instead of putting up a sign. A sign was not put up, it was not filled in and later in the day an individual was severely injured.

Motion: **SEN. HOLDEN MOVED SB 87 DO PASS AS AMENDED.**

SEN. BARTLETT believed that most of the state was open to the operation of snowmobiles unless it was specifically not opened to snowmobiles. Open areas would not be cared for on a regular basis. She questioned the liability of the snowmobile operator and the snowmobile area operator.

Maggie Whitman, Legislative Affairs Coordinator for the Forest Service, agreed to provide information for the committee.

Mr. Hoovestal stated that this legislation addresses the trail systems and designated areas that are under the control and maintenance of an entity. Snowmobiling in open areas would be the same as hunting, skiing, hiking, horseback riding, etc. This legislation does not address persons off on their own. This would involve the general liability of the situation.

SEN. BARTLETT maintained that this bill was proposed to limit the areas in which there is some liability for snowmobile area operators. She is not confident that this has been accomplished.

Vote: **The motion carried unanimously.**

EXECUTIVE ACTION ON SB 112

Motion: **SEN. HALLIGAN MOVED SB 112 DO PASS.**

Discussion:

SEN. BARTLETT maintained that her understanding is that this bill would begin to require that for parole purposes any of these offenders would already be under a legal obligation to have provided the sample.

Vote: **The motion carried unanimously.**

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 4, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 87, SB 60, SB 112, SB 158, 3/1/1999

Executive Action: None

HEARING ON SB 87

Sponsor:

Senator Hargrove presented SB 87.
{Tape : 1; Side : A; Approx. Time Counter : 25 - 52}

Proponents:

Ken Hoovestal, Montana Snowmobiler Association
{Tape : 1; Side : A; Approx. Time Counter : 52 - 77}
EXHIBIT(1)
Bob Lane, Fish Wildlife and Parks
{Tape : 1; Side : A; Approx. Time Counter : 77 - 129}
Al Smith, Montana Trial Lawyers Association
{Tape : 1; Side : A; Approx. Time Counter : 129 - 155}

Opponents:

None
Informational Testimony:

None
Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 155 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 133}

Closing by Sponsor:

Senator Hargrove made closing statements.
{Tape : 1; Side : B; Approx. Time Counter : 133 - 183}

HEARING ON SB 60

Sponsor:

Senator Hargrove presented SB 60.
{Tape : 1; Side : B; Approx. Time Counter : 183 - 218}

Senator Bartlett presented SB 250
{Tape : 3; Side : A; Approx. Time Counter : 196 - 280}

Proponents:

None
Opponents:

Judge Larson, District Court Judge, Missoula
{Tape : 3; Side : A; Approx. Time Counter : 280 - 304}

Informational Testimony:

None
Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 304 - 350}

Closing by Sponsor:

Senator Bartlett made closing statements.
{Tape : 3; Side : A; Approx. Time Counter : 350 - 377}

EXECUTIVE ACTION ON SB 87

Motion: REP. SHOCKLEY moved that SB 87 BE CONCURRED IN.
Motion: REP. P. CLARK moved that SB 87 BE AMENDED. AMENDMENT FAILS on a voice vote.
Vote: Motion that SB 87 BE CONCURRED IN carried 15-5 with P. Clark, Eggers, Gallus, Hurdle, and Wyatt voting no.
{Tape : 3; Side : A; Approx. Time Counter : 377 - 550}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 291}

Meeting adjourned.